IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8608 of 2002
with
SPECIAL CIVIL APPLICATION Nos 8615 and 8617 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

@

AHMEDABAD MUNICIPAL TRANSPORT SERVICE
Versus
SISODIYA D. RANJITSINH

Appearance:
1. Special Civil Application No. 8608 of 2002
MR HS MUNSHAW for Petitioner No. 1
MR VM DHOTRE for Respondent No. 1-7

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 28/08/2002

ORAL JUDGEMENT

Rule. Mr VM Dhotre appearing for the respondents on caveat waives service of rule. In the facts and circumstances of the case and with the consent of the

learned counsel for the parties, the petitions are taken up for final disposal.

2. These three petitions filed by the Ahmedabad Municipal Transport Service through its Transport Manager challenge the common order dated 6-7-2002 passed by the Industrial Tribunal, Ahmedabad below the application for interim orders in Complaint (IT) Nos. 52, 56 and 57 of 2002 under Section 33A of the Industrial Disputes Act, 1947 (hereinafter referred to as `the Act'). The respondents are daily wager drivers and conductors having employed by the AMTS when their services are required in addition to the services of permanent drivers and permanent conductors.

3. The respondents herein have filed the above numbered complaints under Section 33A of the Act contending that even when the references at the instance of the respondents/Union are pending in connection with their demand for regularisation and permanent status upon completion of 240 days service in a year, the petitioner herein i.e. the employer is changing the service conditions and, therefore, they are liable to be proceeded against under Section 33A of the Act. The respondents have contended that the Ahmedabad Municipal Corporation has passed a Resolution dated 27-9-1982 that the employees of the Municipal Corporation who have put in 5 years service with 900 days in the aggregate in the 5 years are entitled to become permanent employees of the Corporation and to get all the consequential benefits. The respondents had contended that the AMTS had 750 buses, out of which some buses were scrapped. On 15-1-2002, the AMTS had decided to ply 612 buses. A number of permanent employees of the AMTS have retired or have resigned and, therefore, there are vacancies in permanent posts of drivers, conductors and helpers and the respondents herein were rendering their services against such vacant permanent posts. However, inspite of the aforesaid decision dated 15-1-2002, the AMTS does not ply 25 to 50% of the available buses and are not sanctioning leave being applied for by the permanent workmen and the employer has thus adopted the policy of not employing the daily wagers like the respondents who fulfil the criteria of 5 years and 900 days aggregate service in 5 years and are thus depriving the respondents of their right to become permanent workmen of the AMTS.

4. During pendency of the complaints, the respondents also filed applications for interlocutory orders to the effect that the AMTS should not resort to

illegal lock out and should not prevent the respondent-complainants from discharging their duties or from obtaining work on day-to-day basis.

After hearing the learned counsel for the parties, the Tribunal has allowed those applications for interim orders by its impugned judgment and award dated 6-7-2002 and granted the relief prayed for in paragraph 22(a) of the interim applications during pendency of the petition. The gist of paragraph 22(a) of those applications is already produced hereinabove.

5. Mr Munshaw, learned counsel for the petitioner AMTS has submitted that on account of recent disturbances in the city of Ahmedabad, there was not enough traffic to ply all the road worthy buses of the AMTS, apart from the fact that a large number of buses require repairs but for paucity of funds, the AMTS is not in a position to get them repaired and ply them. Reference is also made to the details of income/expenditure for the months of January to June, 2002 and it is contended that the income from passenger fare had gone down from about Rs.531 lacs in January, 2002 to Rs.154 lacs in March, 2002 and that even in June it was only about Rs.370 lacs. It is also pointed out that the monthly loss for January, 2002 was Rs.238 lacs which went upto Rs.425 lacs in March, 2002 and in June again it was Rs.245 lacs. It is, therefore, submitted that there is no question of AMTS not plying road worthy buses when the passenger traffic would be available. It is submitted that it was on account of the disturbances that all the road worthy buses could not be plied and that a large number of buses could not be made road worthy for paucity of funds. Reference is also made to the details given in the statement at Annexure "F" to the petition pointing out that a large number of permanent conductors and permanent drivers are also rendered surplus as the number of buses being plied is only in the vicinity of about 400. It is, therefore, submitted that when the AMTS is not able to offer work to its permanent conductors and drivers, the question of offering work to daily wagers like the respondents would not arise. It is submitted that in any case, there is no intention to deprive the daily wagers like the respondents of work when the work would be available for them, provided there is enough work for the permanent drivers and conductors.

6. On the other hand, Mr VM Dhotre, learned counsel for the respondents has submitted that the situation in March or April, 2002 might have been extraordinary situation but in any case when normalcy has been

restored, there is no justification for the AMTS in not offering work to the daily wagers like the respondents who have already completed 5 years service with more than 900 days aggregate service and that the respondents have already become due for being made permanent conductors or drivers, as the case may be. Mr Dhotre also makes a grievance that even when on a given day if 450 road worthy buses are available and are required for a large number of routes, the AMTS plies only such number of buses for which permanent drivers and conductors are available and if enough number of permanent drivers are not available, the buses are not being plied and a deliberate attempt is made to deprive the concerned respondents of their right to work as drivers even when sufficient traffic is available for the AMTS.

7. Having heard the learned counsel for the parties and having perused the relevant statement of the details of income and the number of permanent drivers and conductors who were given spare duty for the month of June and July, 2002 (Annexure F to the petition), it appears to the Court that a large number of permanent conductors are presently rendered surplus because the number of buses being plied on roads is only in the range between 400 to 450. On account of the said situation, almost 200 permanent conductors are required to be treated as spare conductors.

8. As far as permanent drivers are concerned, while on a few days no permanent driver was required to be treated as a spare driver, there are a number of days in the months of June and July when 10 to 70 drivers were required to be treated as spare drivers. It, therefore, appears to the Court that when the petitioner AMTS, a public utility, has road worthy buses available and it can hope to augment its income only by plying more and more buses, obviously all the road worthy buses would be plied on a large number of routes being catered to by the AMTS. If adequate number of permanent drivers are not available for all such road worthy buses, obviously the AMTS would certainly ply all the road worthy buses by availing of the services of the permanent as well as daily wager drivers in accordance with their seniority. The Transport Manager and the concerned officers shall look into this aspect.

9. The final picture that emerges at this stage is that -

(a) as far as the conductors are concerned, it

appears that since permanent conductors themselves are spare conductors at present in large numbers, the daily wager conductors may not entertain hopes for their employment in the near future.

(b) as far as the daily wage drivers are concerned, those who have put in 5 years service and aggregate 900 days service can look forward to their employment as spare drivers in the AMTS when enough number of permanent drivers are not available.

(c) Similarly, though the figures about the permanent helpers and the spare helpers are not available, the Transport Manager and the concerned Officers of the AMTS will look into their figures also and ensure that all the road worthy buses are plied and as many daily wager helpers who can be offered employment as daily wagers shall be offered employment on the basis of their seniority in the respective categories, after permanent helpers are offered work.

10. It appears to the Court that this arrangement can work satisfactorily during pendency of the complaints before the Industrial Tribunal and, therefore, the ad-interim order dated 6-7-2002 passed by the Industrial Tribunal in the interim applications, which order is impugned in the present petitions, is required to be substituted by the aforesaid interim arrangement and the interim arrangement contained in this order shall be the only interim arrangement during pendency of the above numbered complaints before the Industrial Tribunal.

11. Looking to the nature of the controversy between the parties, it would be desirable if the Tribunal disposes of the references as well as the above numbered complaints as expeditiously as possible and preferably by 31st December, 2002.

12. Rule is made absolute to the aforesaid extent in all these petitions with no order as to costs.

(M.S. Shah,J)

zgs/-